

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ODELIA ABECASSIS, et al.	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 4:09-CV-003884
	§	
OSCAR S. WYATT, JR., et al.	§	
	§	
<i>Defendants.</i>	§	

**MEMORANDUM IN OPPOSITION TO THIRD-PARTY PLAINTIFFS’
MOTION FOR ISSUANCE OF LETTERS ROGATORY**

Third-party defendants B. Braun Melsungen AG and Aesculap AG (collectively, the “B. Braun Defendants”) respectfully submit this brief in opposition to the motion of third-party plaintiffs Bayoil (USA), Inc.; David B. Chalmers, Jr.; Oscar S. Wyatt, Jr.; and NuCoastal Corporation (collectively, “Third-Party Plaintiffs”) for issuance of letters rogatory.¹ This opposition is filed simultaneously with the B. Braun Defendants’ opposition to the Third-Party Plaintiffs’ Second Motion to Extend Time to Serve the Third-Party Complaint (the “Opposition to the Second Motion to Extend Time”), which is incorporated herein by reference.

For the reasons set forth in the B. Braun Defendants’ Opposition to the Second Motion to Extend Time, the B. Braun Defendants respectfully submit that Third-Party

¹ The B. Braun Defendants are not appearing generally and object to their inclusion in this action because, among other things, this Court lacks jurisdiction over them. The B. Braun Defendants make this limited appearance only to oppose Third-Party Plaintiffs’ motions for an extension of the service deadline and for issuance of letters rogatory. Nothing herein or otherwise is intended or shall be deemed to be a waiver of this Court’s lack of personal jurisdiction over the B. Braun Defendants and the B. Braun Defendants’ right to raise, among others, objections as to service of process and subject matter and personal jurisdiction, all of which are hereby expressly preserved. *See Bayou Steel Corp. v. M/V Amstelveen*, 809 F.2d 1147, 1148 (5th Cir. 1987); *Painwebber Inc. v. Chase Manhattan Private Bank (Switz.)*, 260 F.3d 453, 461 (5th Cir. 2001).

Plaintiffs' motion for issuance of letters rogatory should be denied as untimely. The Court-ordered deadline for Third-Party Plaintiffs to serve all third-party defendants in this action expired on the day of the filing of Third-Party Plaintiffs' motion for issuance of letters rogatory, and Third-Party Plaintiffs have not shown good cause warranting an additional extension of the service deadline. Absent such an extension, Third-Party Plaintiffs' service attempts via letters rogatory would be untimely and, thus, futile.

Accordingly, for the foregoing reasons, the B. Braun Defendants respectfully submit that Third-Party Plaintiffs' Motion for Issuance of Letters Rogatory should be denied in all respects.

Dated: June 7, 2013

Respectfully Submitted,

/s/ Stephanie D. Clouston

Stephanie D. Clouston
Attorney-In-Charge
Texas State Bar No. 24002688
Southern District of Texas Bar No. 1430766
ALSTON & BIRD LLP
2828 North Harwood Street
Suite 1800
Dallas, TX 75201
Telephone: (214) 922-3400
Facsimile: (214) 922-3899
stephanie.clouston@alston.com

Of Counsel:

Karl Geercken
New York State Bar No. 2536662
(*Pro Hac Vice* To Be Filed)
Alexander S. Lorenzo
New York State Bar No. 4426094
(*Pro Hac Vice* To Be Filed)
Christina Spiller
New York State Bar No. 4596177
(*Pro Hac Vice* To Be Filed)

ALSTON & BIRD LLP
90 Park Avenue
New York, New York 10016
Phone: (212) 210-9400
Fax: (212) 210-9444
karl.geercken@alston.com
alexander.lorenzo@alston.com
christina.spiller@alston.com

**ATTORNEYS FOR THIRD-PARTY
DEFENDANTS B. BRAUN
MELSUNGEN AG AND AESCULAP AG**

CERTIFICATE OF SERVICE

On June 7, 2013, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Stephanie D. Clouston